

96TH CONGRESS
1ST SESSION

H. R. 237

To amend the General Revision of Copyright Law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1979

Mr. DANIELSON introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To amend the General Revision of Copyright Law, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Performance Rights
4 Amendment of 1977".

5 SECTION 1. Section 114 of Public Law 94-553 (90
6 Stat. 2547) is amended in its entirety to read as follows:

7 "§ 114. Scope of exclusive rights in sound recordings

8 "(a) LIMITATIONS ON EXCLUSIVE RIGHTS.—The ex-

9 Approved For Release 2003/11/06 : CIA-RDP85-00988R000400150002-1
exclusive right of the owner of copyright in a sound recording

1 under clause (1) of section 106 is limited to the right to dupli-
2 cate all or any part of the sound recording in the form of
3 phonorecords, or of copies of motion pictures and other
4 audiovisual works, that directly or indirectly recapture the
5 actual sounds fixed in the recording. The exclusive right of
6 the owner of copyright in a sound recording under clause (2)
7 of section 106 is limited to the right to prepare a derivative
8 work in which all or any part of the actual sounds fixed in the
9 sound recording are rearranged, remixed, or otherwise al-
10 tered in sequence or quality. In addition to the limitations
11 provided by section 110, the exclusive right of the owner of
12 copyright in a sound recording under clause (4) of section 106
13 is limited to the right to perform publicly all or any part of
14 the actual sounds fixed in the sound recording. The exclusive
15 rights of the owner of copyright in a sound recording under
16 clauses (1), (2), and (4) of section 106 do not extend to the
17 making or duplication of another sound recording that con-
18 sists entirely of an independent fixation of other sounds, or to
19 the performance of other sounds, even though such sounds
20 imitate or simulate those in the copyrighted sound recording.

21 “(b) PERFORMANCE RIGHTS DISTINCT.—The exclu-
22 sive right to perform publicly, by means of a phonorecord, a
23 copyrighted literary, musical, or dramatic work, and the ex-
24 clusive right to perform publicly a copyrighted sound record-

25 ing, are separate and independent rights under this title.

1 “(c) COMPULSORY LICENSE FOR PERFORMANCE OF
2 SOUND RECORDINGS—

3 “(1) Subject to the provisions of sections 111 and
4 116, the exclusive performance right in a sound re-
5 cording is subject to compulsory licensing under the
6 conditions specified by this subsection, if phonorecords
7 of the sound recording have been distributed to the
8 public under the authority of the copyright owner.

9 “(2) Any person who wishes to obtain a compul-
10 sory license under this subsection shall fulfill the fol-
11 lowing requirements:

12 “(A) He shall, at least thirty days before the
13 public performance and thereafter at intervals and
14 in accordance with requirements that the Register
15 of Copyrights shall prescribe by regulation, record
16 in the Copyright Office a notice stating his iden-
17 tity and address and declaring his intention to
18 obtain a compulsory license under this subsection;

19 “(B) He shall deposit with the Register of
20 Copyrights, at annual intervals in accordance with
21 requirements that the Register of Copyrights shall
22 prescribe by regulation, a statement of account
23 and a total royalty fee for the period covered by
24 the statement, based on the royalty provisions of

“(3) Failure to record the notice, file the statement, or deposit the royalty fee prescribed by clause (2) renders the public performance of a sound recording actionable as an act of infringement under section 501 and fully subject to the remedies provided by sections 502 through 505, but not including the criminal remedies provided by section 506.

“(4) The annual royalty fees under this subsection shall at the user’s option be computed on a per-use basis, a prorated basis, or a blanket basis. Royalties shall be payable only for performances of copyrighted sound recordings fixed on or after February 15, 1972. Although a negotiated license may be substituted for the compulsory license prescribed by this subsection, in no case shall the negotiated rate amount to less than the applicable rate provided by this clause. The following rates shall be applicable:

“(A) For a radio broadcast station licensed by the Federal Communications Commission, the royalty rate or payment shall be as follows:

“(i) in the case of a broadcast station with gross receipts from its advertising sponsors of more than \$25,000 but less than \$100,000 a year, the yearly performance

1 “(ii) in the case of a broadcast station
2 with gross receipts from its advertising spon-
3 sors of more than \$100,000 but less than
4 \$200,000 a year, the yearly performance
5 royalty payment shall be \$750, or

6 “(iii) in the case of a broadcast station
7 with gross receipts from its advertising spon-
8 sors of more than \$200,000 a year, the
9 yearly blanket rate shall be 1 per centum of
10 the net receipts from the advertising spon-
11 sors during the applicable period. The alter-
12 native prorated rate is a fraction of 1 per
13 centum of such net receipts, based on a cal-
14 culation made in accordance with a standard
15 formula that the Register of Copyrights shall
16 prescribe by regulation, taking into account
17 the amount of the station's commercial time
18 devoted to playing copyrighted sound record-
19 ings.

20 “(B) For a television broadcast station li-
21 censed by the Federal Communications Commis-
22 sion, the royalty rate or payment shall be as fol-
23 lows:

24 “(i) in the case of a broadcast station
25 with gross receipts from its advertising spon-

1 sors of more than \$1,000,000 but less than
2 \$4,000,000 a year, the yearly performance
3 royalty payment shall be \$750; or

4 “(ii) in the case of a broadcast station
5 with gross receipts from its advertising spon-
6 sors of more than \$4,000,000 a year, the
7 yearly performance royalty payment shall be
8 \$1,500.

9 “(C) Subject to section 111, for background
10 music services and other transmitters of perform-
11 ances of sound recordings, the yearly blanket rate
12 is 2 per centum of the gross receipts, from sub-
13 scribers or others who pay to receive the trans-
14 mission during the applicable period. The alterna-
15 tive prorated rate is a fraction of 2 per centum of
16 such gross receipts, based on a calculation made
17 in accordance with a standard formula that the
18 Register of Copyrights shall prescribe by regula-
19 tion, taking into account the proportion of time
20 devoted to the use of copyrighted sound record-
21 ings by the transmitter during the applicable
22 period, and the extent to which the transmitter is
23 also the owner of copyright in the sound record-
24 ings performed during said period.

1 “(D) For an operator of coin-operated phono-
2 record players, as that term is defined by section
3 116, and for a cable system, as that term is de-
4 fined by section 111, the compulsory licensing
5 rates shall be governed exclusively by those re-
6 spective sections, and not by this subsection.

7 “(E) For all other users not otherwise
8 exempted, the blanket rate is \$25 per year for
9 each location at which copyrighted sound record-
10 ings are performed. The alternative prorated rate
11 shall be based on the number of separate perform-
12 ances of such works during the year and, in ac-
13 cordance with a standard formula that the Regis-
14 ter of Copyrights shall prescribe by regulation,
15 shall not exceed \$5 per day of use.

16 “(d) EXEMPTIONS.—In addition to users exempted
17 from liability by section 110 or subject to the provisions of
18 section 111 or 116, any person who publicly performs a
19 copyrighted sound recording and who would otherwise be
20 subject to liability for such performance is exempted from
21 liability for infringement and from the compulsory licensing
22 requirements of this section, during the applicable annual
23 period, if—

1 “(1) In the case of a radio broadcast station, its
2 gross receipts from advertising sponsors were less than
3 \$25,000; or

4 “(2) In the case of a television broadcast station,
5 its gross receipts from advertising sponsors were less
6 than \$1,000,000; or

7 “(3) In the case of a background music service or
8 other transmitter of performances of sound recordings,
9 its gross receipts from subscribers or others who pay to
10 receive the transmission were less than \$10,000.

11 “(e) DISTRIBUTION OF ROYALTIES.—

12 “(1) During the month of September in each year,
13 every person claiming to be entitled to compulsory li-
14 cense fees under this section for performance during
15 the preceding twelve-month period shall file a claim
16 with the Register of Copyrights, in accordance with re-
17 quirements that the Register shall prescribe by regula-
18 tion. Such claims shall include an agreement to accept
19 as final, except as provided in section 809 of this title,
20 the determination of the Copyright Royalty Tribunal in
21 any controversy concerning the distribution of royalty
22 fees deposited under subclause (B) of subsection (c)(2)
23 of this section to which the claimant is a party. Not-
24 withstanding any provisions of the antitrust laws (the
25 Act of October 15, 1914, 38 Stat. 730, and any

1 amendments of any such laws), for purposes of this
2 subsection any claimants may agree among themselves
3 as to the proportionate division of compulsory licensing
4 fees among them, may lump their claims together and
5 file them jointly or as a simple claim, or may designate
6 a common agent to receive payment on their behalf.

7 “(2) After the first day of October of each year,
8 the Register of Copyrights shall determine whether
9 there exists a controversy concerning the distribution
10 of royalty fees deposited under subclause (B) of subsec-
11 tion (c)(2). If he determines that no such controversy
12 exists, he shall, after deducting his reasonable adminis-
13 trative costs under this section, distribute such fees to
14 the copyright owners and performers entitled, or to
15 their designated agents. If he finds that such a contro-
16 versy exists he shall certify to that fact and proceed to
17 constitute a panel of the Copyright Royalty Tribunal in
18 accordance with section 803. In such cases the reason-
19 able administrative costs of the Register under this
20 section shall be deducted prior to distribution of the
21 royalty fee by the tribunal.

22 “(3) For the purposes of this section:

23 “(A) One-half of all royalties to be
24 distributed shall be paid to the copyright owners,

1 to be shared equally on a per capita basis, of the
2 sound recordings for which claims have been
3 made under clause (1).

4 “(B) Neither a performer nor a copyright
5 owner may assign his right to the royalties pro-
6 vided for in this section to the copyright owner or
7 performer of the sound recording, respectively.

8 “(C) During the pendency of any proceeding
9 under this section, the Register of Copyrights or
10 the Copyright Royalty Tribunal shall withhold
11 from distribution an amount sufficient to satisfy all
12 claims with respect to which a controversy exists,
13 but shall have discretion to proceed to distribute
14 any amounts that are not in controversy.

15 “(f) The provisions of subsection (e) of this section shall
16 not take effect for a period of one year from the date of en-
17 actment of this legislation. During the period between the
18 enactment of this legislation and the first distribution of roy-
19 alties by the Register of Copyrights, the copyright owners,
20 performers, and copyright users affected by this section are
21 encouraged to establish a private, nongovernmental entity to
22 assume the collection and distribution functions of the Regis-
23 ter of Copyrights as prescribed in subsections (c)(2) and (e) of
24 this section, to whatever extent shall be agreed upon by said

25 parties. Notwithstanding any provisions of the antitrust laws

1 (the Act of October 15, 1914, 38 Stat. 730, and any amend-
2 ments of any such laws), for purposes of this subsection any
3 copyright owners, performers or copyright users may agree
4 among themselves as to the establishment of such an entity,
5 as to the collection and distribution of licensing fees, and may
6 designate a common agent to collect and receive payments
7 on their behalf. One year after the enactment of this legisla-
8 tion, the Register of Copyrights shall continue to perform the
9 duties prescribed in subsection (c)(2) of this section, and shall
10 proceed to perform the duties prescribed in subsection (e) of
11 this section, until such time as the parties do establish an
12 entity to assume such functions, or if such an entity has been
13 established, there remain copyright owners, performers, and
14 copyright users who are not party to the entity so
15 established.

16 “(g) RELATION TO OTHER SECTIONS.—The public
17 performance of sound recordings by means of secondary
18 transmissions and coin-operated phonorecord players is gov-
19 erned by sections 111 and 116, respectively, and not by this
20 section, except that there shall be an equal distribution of
21 royalty fees for such public performances between copyright
22 owners and performers as provided by subsection (e)(3)(A) of
23 this section.

24 “(h) DEFINITIONS.—As used in this section, the follow-

1 “(1) ‘Commercial time’ is any transmission pro-
2 gram, the time for which is paid for by a commercial
3 sponsor, or any transmission program that is
4 interrupted by a spot commercial announcement at in-
5 tervals of less than fourteen and one-half minutes.

6 “(2) ‘Performers’ are musicians, singers, conduc-
7 tors, actors, narrators, and others whose performance
8 of a literary, musical, or dramatic work is embodied in
9 a sound recording.

10 “(3) ‘Net receipts from advertising sponsors’ con-
11 stitute gross receipts from advertising sponsors less
12 any commissions paid by a radio station to advertising
13 agencies.”.

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